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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/580,721	05/30/2000	Gary Haberland	00-P-24039	1216

7590 02/25/2003

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EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 02/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/580,721

Applicant(s)  
Haberland et al.

Examiner  
Michael Thaler

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3731



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb 10, 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 and 10-12 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on Feb 10, 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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The disclosure is objected to because of the following informalities: In claim 1, line 9, "torcar" should be "trocar". Claims 4, 7 and 10 have the same problem. In claim 10, line 17, "portio" should be "portion". Appropriate correction is required.

Claims 1-3 and 5-9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Moll (4,601,710). Moll, in figures 1-5, show cannula 6 having a cannula body 48 including medial and distal portions (the relatively small diameter portion of body 48 as seen in figure 1) having a first diameter and a proximal portion (the relatively large diameter portion of body 48 which supports lugs 51 as seen in figure 1), trocar 4 having elongate body having sharpened distal portion 16, medial portion 18, proximal portion (the relatively small diameter portion of cap 20), handle (the relatively large diameter portion of cap 20) and shield 30. Alternatively, only the relatively large diameter portion of cap 20 may obviously be considered a handle since it is primarily this portion of cap 20 which is grasped by the user's hand. Moll also shows a first shield stop (the base 47 of slot 40) comprising a shoulder on an inner surface of the shield body that cooperates with the distal end 16 of the trocar body to provide a stop for the shield body (col. 3, lines 8-9). As to claims 2 and 8, Moll shows biasing means 44 positioned between an outer surface of medial portion 18 of the trocar body and an inner surface (within region 34) of the

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shield body 30. As to claims 3 and 9, the Moll transition region (where medial portion 18 extends to the relatively small diameter portion of cap 20, in other words, the surface that engages the right end of spring 44 as seen in figure 2) inherently would act as a shield stop since the shield can move proximally until the windings of spring 44 contact each other and are compressed and prevented from moving further proximally by the transition region identified above. Even if tissue which surrounds the body opening formed by the trocar is unable to push the shield proximally sufficiently far to compress spring 44 until its windings contact each other, using a finger, for example, to engage shield 30 and push it proximally would move shield to its extreme proximal end position in which the transition region acts as a shield stop. As to claim 5, the radially outer edges of the three blades 22 of Moll together form a diameter as seen in figure 4.

Claims 4 and 10-12 are allowed.

Applicant's arguments filed Feb. 10, 2003 have been fully considered but they are not persuasive. The allegation that Moll does not disclose a first shield stop comprising a shoulder on an inner surface of the shield body that cooperates with the distal end 16 of the trocar body to provide a stop for the shield body is not well founded. The Moll base 47 of slot 40 comprises a shoulder that extends radially outwardly from the inner surface of the bore

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32 of the shield body 30. This base 47 performs the claimed function as indicated in col. 3, lines 8-9.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are

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(703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht  
February 21, 2003



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731